

1895-072 Chancery Causes: S. S. Rose vs. Hiram J. Howard
Lee Co.

Chance

CA-Contract Dispute
T-Property

Commonwealth of Virginia.

In the Circuit Court of Lee County,

At 2nd Feb. rules 1895.

To the Honorable W. T. Miller Judge of the Circuit Court
of Lee County,

Humbly complaining, sheweth unto your honor
your orator S. S. Rose who sues for the benefit
of Peter F. Chance, that your orator sometime
before the year 1890, was seized of and entitled to a good
fee simple estate in and to certain lands lying in
the county of Lee, And your orator being so seized
or entitled, and being desirous to sell the same, did
contract with one Hiram J. Howard, on the 9th
day of Sept. 1890, for the sale of the said land to him
at which time, the said Hiram J. Howard did agree
to purchase the said land of your orator at the price
of \$1800. and executed his bond to your orator as
part of the purchase price of said land for the sum of
\$875⁰⁰ which bond bears date on the 9th day of Sept. 1890
and is due by the 1st day of January 1893, without interest
till due from which time it bears interest, which bond
is here filed marked 'A' and is prayed to be taken and
considered as part of this bill. Your orator, on
the 30th day of Sept. 1890, assigned said bond for value
received to Peter F. Chance for whose benefit he brings
this suit. Your orator will further shew unto
your honor that at or about the time that said
bond was executed, he executed to the said Hiram J.
Howard a good and sufficient deed for said land
conveying said land to Hiram J. Howard ^{him} according to his directions,
and placed him in the possession of said deed and land
^{and assigned}
A copy of said deed is here filed marked 'B' and
prayed to be treated and considered as part of this bill.

1 Your orator charges that the said deed reserves the
2 vendors lien until the entire purchase money is paid
3 in full, Your orator further charges that said
4 bond is all due and unpaid and that the same
5 belongs to Peter F. Chance, and that the said Hiram J.
6 Howard has failed and refused to pay the same to any
7 proper person and that he has thus failed to comply
8 with his contract, which is contrary to equity and
9 good conscience.

10 In tender consideration whereof and for as much
11 as your orator is remediless in the premises, save by the
12 aid of a court of equity, where matters of this kind are
13 always and properly cognizable, Your orator prays that
14 the said Hiram J. Howard may be made a party
15 defendant to this bill and that he answer ^{but not} the same ^{on}
16 oath that being waived, that said vendors lien be enforced
17 and that the said Hiram J. Howard may be compelled
18 to pay to Peter F. Chance the amount of purchase money
19 of said bond together with the interest thereon
20 and the costs of this suit, that proper process may issue
21 and that your orator may have such other, further
22 and general relief as the nature of his case may require
23 or to equity seem meet, And your orator will
24 ever pray etc— M. G. Ely p. g.

1 Caly -

S. S. Rose for etc -

W. S. Bill in Chancery

Wm. J. Howard et al

Bond Filed

1895-1st Sept rules bill

Sumo 24 cents & D. M.

" 2nd Sept rules & D. M.

& Cause set for hearing

S.S. Rose for &c.

Plaintiff.

vs.

In Chancery.

Hiram J. Howard et als.

Defendants.

Circuit Court of Lee County, Virginia.

To the Honorable W.T. Miller, Judge of the Circuit Court for Lee County, Virginia:

The separate answer of Hiram J. Howard to a bill in chancery exhibited against him in this honorable court by S.S. Rose for the benefit of Peter F. Chance:

Respondent says that complainant's bill is not sufficient in law to call upon him to answer it in this honorable court, but that there is good cause of demurrer thereto, and he demurs accordingly, and prays judgment of his said demurrer &c.

And not waiving said demurrer, but relying and insisting thereon, should other and further answer be required of him, answering, he says:

That it is true that he purchased from S.S. Rose a tract of land situated in Lee County at the price of \$1800.00; it is further true that respondent executed, as a part of the purchase price of said tract of land, the bond filed with the plaintiff's bill marked exhibit "A" for \$87.50; it is likewise true, as respondent supposes, that said note was assigned by the said Rose to Peter F. Chance, the beneficial plaintiff.

Respondent will now show your honor that he has long since paid to the said Rose ~~xxx the purchase price~~ and his assignees all of the purchase price of said tract of land except ~~xxxx~~ \$87.50 evidenced by the note aforesaid, marked "A" with complainant's bill.

Respondent will now further show your honor that at the time he purchased said tract of land one L.M. Day had a judgment against S.S. Rose for the benefit of Henry S. Kane's estate for \$35.00 with interest thereon from the 1st day of January 1878 till paid and \$1081 costs, which judgment was duly docketed in the Judgment lien docket in the Clerk's office of the county court of Lee County, and constituted a lien on the tract of land

purchased by your respondent from said Rose as aforesaid.

Your respondent will now further show your honor that at the first February Rules 1893, the said L.M.Day, for &c. filed his bill against your respondent and the said S.S.Rose, the object of which was to enforce the lien of said judgment against the land so purchased by your respondent from said Rose. On the 10 day of March 1893, your respondent filed his answer to said bill in which he showed that he still owed said sum of \$87.50 with its interest; that the note evidencing the same had been assigned to the said Peter F.Chance; and asking that if said judgment was enforced as a lien against his land, that the same might be paid out of said \$87.50 still owed by him on said land. Upon the filing of said answer, the complainant in said bill took leave to amend his bill, making P.F.Chance a party thereto, and at the second May Rules 1893 said amended bill was filed, process issued, and was duly executed on the said P.F.Chance on the 10th day of May 1893. And on the 9th of June 1893 said cause, cause having matured on said amended bill, and the said Chance filing no answer thereto, the bill was taken for confessed against him when it was adjudged ordered and decreed that J.L.Shoemaker, Admr of Henry S.Kane, deceased, recover of Samuel S.Rose the sum of \$45.81 with legal interest on \$35.00, a part thereof from the 1st day of January 1878, till paid and the costs of suit; and that your respondent, the said Hiram J.Howard, pay said sum of money out of the money due by him to P.F.Chance on the note for \$87.50 assigned by the said Rose to the said Chance, and that whatever sum he paid on the same should constitute a credit to him on said note in the hands of the said Chance or his assignees. And it was further decreed that unless said sum was paid within twenty days from the date of said decree, then A.M.Goins who was appointed a commissioner for the purpose, was directed to rent your respondent's land for the least number of years less than five that it would take to pay the same. Said sum not being paid, on the 18th day of September 1893, A.M.Goins, Commissioner proceeded to rent your respondent's land pursuant to the

terms of said decree, and at said renting thus made your respondent became the rentor at the price of \$124.88, that sum being necessary to pay said judgment, interest, costs of suit and commissions of renting. And he paid down in cash to the said Goins \$45.57, the amount of costs and commissions as aforesaid and executed his note for \$79.51, the residue thereof, with J.M. White head as security. This renting was duly reported to your honor's court, and, by a decree entered therein on the 11th day of November 1893, was confirmed. All of which will more fully and at large appear by reference to the Chancery cause of L.M. Day, for &c. against Hiram Howard et als, still pending in your honor's court, which it is humbly requested your honor will read as a part of this answer.

Your respondent will now further show your honor that on the 10th day of July 1894, he paid to A.M. Goins, Commissioner, the sum of thirty five dollars on said note for ~~\$79.51~~ \$79.51 aforesaid, and the residue thereof is now due and will have to be paid in a very short time by your respondent to the said Goins.

Your respondent is advised that by the terms of said decree aforesaid rendered and pronounced in the above styled cause on the 9th day of June 1893, to which suit both your respondent and the said complainant, were and are parties, the matters between the said complainant and your respondent growing out of said note were fully settled and adjudicated, and that said suit and the proceedings therein had and a complete bar to the plaintiff's right to prosecute this suit.

Respondent is further advised that although he has not quite paid as much on said judgment as the complainant's note, yet as his land was rented for more than that sum, it is a complete settlement of the same so far as the complainant is concerned. And now having fully answered, respondent prays to be hence dismissed with his costs &c.

Duncan & Hyatt
for Def't -

Hiram J. Howard
ads. ⁱⁿ answer-
S. S. Rose for &c.

Duncan & Hyatt, p.d.

Filed Apr. 27th 1895

A.B. Munsey clerk
By S. W. Richmond
rc

~~XXXXXXXXXXXXXX~~.

S.S. Rose for &c.

Complainant.

Vs.

In Chancery

Hiram J. Howard

Defendant

This cause came on this day to be heard on the bill of the Complainant, and exhibit therewith, the answer of the defendant and exhibit and record therewith, and general replication to said answer and was argued by counsel.

On consideration whereof, the court is of opinion that the said defendant should have credit for the sum of money which he has paid and obligated himself to pay to Commissioner A.M. Goins in the chancery cause of L.M. Day for &c against the said Rose, and it further appearing to the Court that said sum thus paid for said Rose is in excess of the note mentioned in this bill, the complainant's bill is dismissed, and it is further adjudged ordered and decreed that the Defendant recover of the beneficial Complainant his costs about his defense in this cause expended, to be taxed by the clerk, for which execution may issue.

But this decree is in no way to prejudice the right of the said beneficial Plaintiff to assert his demand and right of recovery against the said S.S. Rose on account of his said assignment.

And this cause is stricken from the docket.

S. S. Rose Jr. etc

Decree Final!

Hiram J. Howard

Q. B. P. 261

Enter Two

Mr. J. M.

Nov. 11th. 1895

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

Hiram J. Howard

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *1st* Monday in *September*, 189*5*, to answer a bill in Chancery, exhibited against *him* in our said court by *S. S. Rose who*
sues for the benefit of P. F. Chance

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *16th* day of *July*, 189*5*, and in the *20th* year of the Commonwealth.

A B Munsey Clerk.

S. S. Rose for &c

vs. {

SUBPENA
IN CHANCERY.

Hiram J. Howard

M. G. Ely p. q.

To 1st September 1898.

Rules,
Circuit Court.

Executed by delivering
an office copy of the
within summons to Hiram
Howard this Aug 30-1898.
J. M. Weston D.S. for
Wm. P. Weston S. L. C.

S. A. Rose for &c.
vs $\frac{1}{2}$ Chy

Hiram J. Howard

M. G. Ely ---- p. g.

Duncan & Hyatt, p. d.

1895 1st Sept rules bill filed

Spa. executed & Decree nisi

" 2nd Sept rules D. N. Confd
& Cause set for hearing

✓ Defts Costs recovered

Plffs Costs C 2.68
att'y 5.00

C 2.75 Co C 2.85

Tax 1.50 \$7.93

Shft 50 4.93

\$4.75 12.68

November Term 1895 Decree
final Chy Order S. O. 282

John G. Waller

$$\begin{array}{r} 8 \overline{) 28} \\ 3.50 \end{array}$$